



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 4434-99

2 February 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 January 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by Headquarters Marine Corps dated 26 August 1999 and the Navy Department Board for Decorations and Medals dated 15 September 1999, copies of which are enclosed. In addition the Board considered your rebuttal to the advisory opinions dated 4 October 1999.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board noted that until the passage of the National Defense Authorization Act for Fiscal Year 1996, which allowed the submission of award recommendations for acts that were over five years old, there was no way you could be recognized for your heroic actions during the Korean War. Subsequently, you contacted a retired lieutenant general who was your company commander in Korea. Although the general did not have personal knowledge of your heroic acts, he considered the statements from six individuals who witnessed your actions and signed award recommendations for the Navy Cross and the Silver Star. After review by Headquarters Marine Corps and the Navy Department Board of Decorations and Medals, the Bronze Star with Combat "V" was awarded for your actions on 26 December 1952 and the Silver Star was awarded for your actions on 14 January 1953.

You contend in your application that the awards should have been approved as recommended. You believe, in effect, that the six

eye witness statements and a comparison of your actions with the other Master Sergeants who were awarded the Navy Cross in Korea will show that the awards were improperly downgraded.

The advisory opinion from Headquarters Marine Corps notes that the recommending officer did not have personal knowledge of the events at issue and the contemporaneous fitness report signed by the general (then a captain) made no mention of heroic acts. The opinion concludes that the eyewitness statements (prepared about 45 years after the events at issue) and comparison with other awards did not support higher awards in your case. The advisory opinion from the Navy Department Board of Decorations and Medals agrees with the Headquarters Marine Corps opinion and notes that no new and pertinent information has been submitted to substantiate and upgrade of your awards.

In your rebuttal to the advisory opinion you again contend that there was no basis to downgrade the awards. You have also provided a comparison of your actions with the actions of three other Marines who received the Navy Cross during the Korean War, and contend that you should also receive that award.

In reaching its decision the Board noted there is a certain amount of subjectivity in these award determinations and some reviewers may give more weight to some factors than others. The Board is aware that many awards are downgraded after comparison with the awards of others. The fact that there are no contemporaneous witness statements or award recommendations with endorsements may have had an impact on the decision to reduce the awards. However, it is clear that if you believed that an award recommendation had been lost or misplaced during the Korean War, you should have attempted to reconstruct that recommendation within the original five year statute of limitations for the submission of such awards.

The Board believed that all individuals who reviewed your award recommendations exercised their responsibilities in a careful and conscientious manner and that there has been no abuse of discretion in your case. Therefore, the Board substantially concurred with the comments contained in the advisory opinions.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1650

MMMA

26 AUG 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]

Ref: (a) [REDACTED] DD Form 149 of 8 Jul 99

Encl: (1) Ltr from [REDACTED] dtd 25 Mar 97
(2) Ltr from [REDACTED] dtd 1 Oct 97
(3) Copy of [REDACTED] fitness report for period 27 Nov 52
to 31 Jan 53
(4) Certificate for Letter of Commendation with
Commendation Ribbon awarded to [REDACTED]

1. [REDACTED] has repeatedly requested that the previously approved decorations, Silver Star Medal approved and signed by the Secretary of the Navy on 11 May 98 and Bronze Star Medal with Combat "V" approved by the Secretary of the Navy and signed by the Commandant of the Marine Corps on 4 Mar 98, be changed to their original recommendations of the Navy Cross and Silver Star Medal, respectively. Since the awards were approved, [REDACTED] has provided no additional pertinent information relevant to his actions. The issue has been addressed on numerous occasions by this Headquarters, the Commandant, and the Secretary of the Navy (M&RA) in correspondence to both [REDACTED] and Congressman Weldon.

2. [REDACTED] entire record, to include all correspondence with this Headquarters pertaining to the case and his official military records, was reviewed again, in depth. After careful consideration of all information available, and considering that no additional information has been provided to substantiate an upgrade, it is the opinion of the Military Awards Branch that the awarding of the Silver Star Medal and Bronze Star Medal with Combat "V" is commensurate with the level of actions performed by Master Sergeant Day.

3. For the award of the Navy Cross and Silver Star Medal, there is a distinct procedure that is followed in processing the recommendations. Once the award is received at this headquarters, the Marine's personal records are ordered from the National Personnel Records Branch, St. Louis, Missouri. The contents of the summary of action are compared against awards for similar actions and were approved during the same time frame.

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]

At this point, the awards are boarded and relevant information is presented. A recommendation is made to the Commandant for his endorsement. The Commandant reviews the information and makes his recommendation to the Secretary of the Navy. The awards are then sent to the Secretary of the Navy's awards board and the process is repeated. A recommendation is given to the Secretary and he makes a final decision based on the information contained in the write-up, the endorsement of the Commandant, and the recommendation of his board. Since the Secretary of the Navy delegated the awarding of the Bronze Star to the Commandant, once the Silver Star was downgraded to the Bronze Star by the Secretary of the Navy, an award citation and certificate was prepared for the Commandant's signature. At that time, the wording of the citation is changed to reflect the standard opening and closing for that medal. The Secretary's awards branch prepared the citation for the downgraded Silver Star Medal for his signature.

4. There are several factors that were instrumental in determining the level of the awards that were approved for [REDACTED]

A. The originating officer had no personal knowledge of the actions performed by Master Sergeant Day.

1) Enclosure (1) is a letter from LtGen Schwenk to Master Sergeant Day dated 25 Mar 97 indicating that he has no recollection of the events as outlined by Master Sergeant Day.

2) Enclosure (2) is a letter from [REDACTED] to Congressman Weldon dated 1 Oct 97 in which he indicates that he located [REDACTED] who stated, "I don't remember what happened in Vietnam much less Korea." Master Sergeant Day then asks Congressman Weldon, "Should I be held captive to that statement?"

B. There is no official indication, other than statements from two members of the platoon (Maeger and Wise) that the award recommendation was given to the Company Executive Officer, that the awards were ever recommended in the first place.

1) Enclosure (3) is a copy of [REDACTED] fitness report for the period 27 Nov 52 to 31 Jan 53, the period in which both events occurred. Block 11 of the report indicates that the report is not a commendatory report. The reporting officer was then [REDACTED].

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]

C. Eyewitness statements do not support higher level awards

1) [REDACTED]

Dec 26: States that [REDACTED] "jumped up on a trench in front of (Cpl Sandifer) and attracted the fire of the sniper". He was wounded and silenced the sniper.

Jan 14: States that [REDACTED] went inside and evacuated the wounded, then escorted them to the aid station and returned to the outpost.

[REDACTED]
Dec 26: Does not remember.

Jan 14: Does not detail any actions, only agrees with the statements made by [REDACTED].

[REDACTED]
Dec 26: States "I saw Gunny Day helping Cpl Sandifer, putting himself in the line of fire and getting wounded twice."

Jan 14: No statement.

[REDACTED]
Dec 26: No Statement.

Jan 14: States that [REDACTED] was a leader in evacuating the wounded even though wounded himself."

[REDACTED]
States that [REDACTED] directed his units to repulse the main core of the enemy force. He then went to the aid of some exhausted and injured Marines...he drew the enemy fire before he silenced the sniper. He then ensured the wounded were evacuated"

***It is important to note that Mr. Wise indicated that the actions described above were the events that occurred in Jan 53 for which Day was recommended for the Navy Cross. However, it was consistent with the description of events that occurred on 26 Dec 52 for which he was recommended for the Silver Star.

[REDACTED]
Dec 26: Stated that "Sgt Day took it upon himself to cover the wounded man and draw fire to himself. Although wounded, assisted in the transport of wounded and returned to the outpost."

***PFC Owen was cited for evacuating the wounded on this same day

Jan 14: Stated that Sgt Day entered the burning bunker and evacuated the personnel.

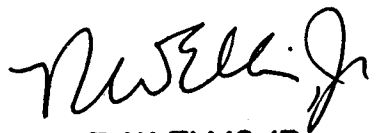
Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]

D. Comparison of awards indicate that the awarding of the Silver Star Medal and Bronze Star Medal with Combat "V" vice the Navy Cross and Silver Star Medal is commensurate with the actions performed.

1) Enclosure (4) is a copy of the Letter of Commendation with Commendation Ribbon that Private First Class Owen received on 26 Dec 52, the same day that [REDACTED] was recommended for the Silver Star. Comparison of these two citations, one a Private First Class and the other a Master Sergeant shows that their actions are very similar.

5. The approval of a lesser award was in no means intended to diminish the contributions that [REDACTED] has made to Country and Corps. On the contrary, they are meant to reward him, at a level commensurate with the actions performed, for his heroic and selfless deeds performed in combat. A copy of both awards, as well as this correspondence, has been filed in his official military records.

6. The point of contact at this Headquarters is [REDACTED] Captain, Acting Branch Head, 703-784-9342.



R. W. ELLIS JR.
Acting



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

1650
NDBDM 001
15 Sep 99

From: Secretary, Navy Department Board of Decorations and Medals (NDBDM)

To: Chairman, Board for Correction of Naval Records

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN THE CASE OF
~~XX~~

Ref: (a) BCNR Ltr AEG:jdh Docket No. 4434-99 of 01Sep99

1. In accordance with reference (a), the Navy Department Board of Decorations and Medals concurs with the Headquarters Marine Corps (Code MMMA) assessment of this case.
2. Specifically, this request does not meet the criteria for an upgrade in that new and pertinent information has not been provided to substantiate such an upgrade. The case reveals that the awards that were issued were justified and that the administration and award level was appropriate. Finally, considering the extensive response that was delineated by the Marine Corps Awards Branch, NDBDM concurs with the entire assessment of this case as presented by them.


J. D. MAHAR
By Direction